



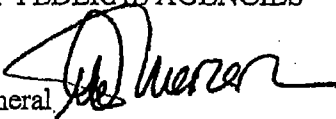
U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

July 19, 2007

MEMORANDUM FOR GENERAL COUNSELS OF FEDERAL AGENCIES

FROM: William W. Mercer
Acting Associate Attorney General 

SUBJECT: Electronic Discovery and the Preservation Obligation

As you are aware, electronic discovery is becoming an increasingly important part of the litigation in which the Department of Justice and other federal agencies are involved. We expect it to become even more important as the courts and litigants become more familiar with the recent amendments to the Federal Rules of Civil Procedure, which explicitly address electronic discovery.

Over the past year, the Department of Justice has engaged in a wide-spread effort to assist and support agencies on issues related to electronic discovery. The Department has hosted programs for agency attorneys and have provided advice to many attorneys on an individual basis.

I have enclosed a memorandum ("Electronic Discovery and the Preservation Obligation: A Guide for Federal Government Attorneys") that I hope will provide useful guidance on preservation obligations as they apply to electronically stored information, and on the recent amendments to the Federal Rules. Of course, the memorandum is not intended to be a substitute for the advice or consultation that will occur in specific litigation. Nor does it reflect a judgment that discovery is appropriate in specific kinds of litigation on behalf of, or against, the federal government. As you review the memorandum, I want to note in particular the importance, and benefit, of an agency's conducting a comprehensive inventory of its information systems. The agency should conduct that inventory (if it already has not done so) as soon as possible. Completing such an inventory before litigation is commenced should result in significant efficiencies in staff time and resources, and will facilitate the process of deciding what discovery, if any, is appropriate in a specific case. Completion of an inventory will facilitate the agency's ability to document its routines for the maintenance and destruction of information on its systems, which will assist it in both developing litigation hold procedures and invoking, if necessary, the "safe harbor" provisions of Rule 37(f).

Memorandum for General Counsels of Federal Agencies
Subject: Electronic Discovery

Page 2

The Department recognizes that preparing agency personnel for electronic discovery is a significant and complex undertaking that will vary from agency to agency. Therefore, your input on these issues is welcome. The Department will make personnel available to address your questions.

If you would like additional guidance or would like to schedule a presentation for your staff, please contact any of the following attorneys:

Civil Division

Ted Hirt, Federal Programs Branch, 202-514-4785
Coleman Bird, Commercial Branch, 202-307-0453
Adam Bain, Torts Branch, 202-616-4209
Rachel Hines, Federal Programs Branch, 202-514-5532
Varu Chilakamarri, Federal Programs Branch, 202-616-8489

Environment and Natural Resources Division

Jim Payne, Law and Policy Section, 202-514-3473
Phillip Brooks, Environmental Enforcement Section, 202-514-3637
Sarah Himmelhoch, Environmental Enforcement Section, 202-514-0180

We look forward to working with you on these important litigation matters.